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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

B.G.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F070517

(Super. Ct. No. 09CEJ300324-1S1)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian Arax,
Judge.

Maria Hoover, for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Amy K. Cobb, Deputy County
Counsel, for Real Party in Interest.

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* Before Detjen, Acting P.J., Franson, J. and Peña, J.

B.G. (father) seeks extraordinary writ relief from the juvenile court's order setting a Welfare and Institutions Code section 366.26 hearing¹ as to his 12-year-old son Aaron. Father contends the juvenile court erred in not granting him custody of Aaron. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Aaron is the son of father and Eleanor. Father resides in Arizona. Eleanor has an ongoing problem maintaining a safe and sanitary home for Aaron and his two half sisters, T.H. and K.H.

In October 2009, the children were taken into protective custody after a sheriff's deputy found them living in poor conditions with exposed electrical wiring and no running water or electricity. The juvenile court found it would be detrimental to place Aaron with father. The court ordered family maintenance services for Eleanor and in February 2012 returned the children to her custody and dismissed its dependency jurisdiction.

These dependency proceedings were initiated in September 2012, when law enforcement found then 10-year-old Aaron, seven-year-old T.H., and five-year-old K.H. living with Eleanor in an unsanitary and unsafe environment. The Fresno County Department of Social Services (department) took the children into protective custody and placed them together in foster care.

In June 2013, the juvenile court exercised its dependency jurisdiction over the children and ordered reunification services for father, Eleanor and the father of T.H. and K.H. The court also appointed a court appointed special advocate (CASA) for the children. Father's reunification plan required him to maintain his relationship with Aaron

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

by complying with the juvenile court's visitation order, which granted him telephonic contact with Aaron twice a week and unsupervised visits while father was in town.

Eleanor received 24 months of reunification services and made significant progress. Father meanwhile maintained a desire to have Aaron placed with him in Arizona but did not have stable housing. In addition, he struggled financially, making it difficult to maintain regular telephone contact with Aaron and to fly to California to visit him. The children had severe behavioral problems that overwhelmed their foster parents. In November 2013, Aaron was moved to another foster home.

In September 2014, the juvenile court returned the children to Eleanor under family maintenance. Eight days later, the department took them into protective custody because of the condition of the home and filed a supplemental petition (§ 387). The department placed Aaron in one foster home and his half sisters in another. Father renewed his request to have Aaron placed with him in Arizona. He said he had a home of sufficient size to accommodate Aaron comfortably.

The juvenile court ordered the children detained pursuant to the supplemental petition and ordered the department to assess father for placement. The department recommended against providing Eleanor additional reunification services and placing Aaron in father's custody. At a settlement hearing, the juvenile court set a contested dispositional hearing on the supplemental petition (contested hearing) and ordered father, who had never appeared in person, to personally appear.

In her report for the contested hearing, the CASA recommended against placing Aaron with father. She stated that father repeatedly missed his weekly telephone call with Aaron with no explanation. Aaron was extremely disappointed as a result and felt insignificant. The CASA said Aaron did not know father, did not remember living with him, and had no emotional attachment to him. She believed Aaron deserved a loving and stable home given his many struggles and disappointments.

In November 2014, the juvenile court conducted the contested hearing. Father did not personally appear. At the conclusion of the hearing, the juvenile court terminated Eleanor's family maintenance services, found it would be detrimental to place Aaron with father, and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Father asserts it was unlikely that Aaron was going to be placed with his half sisters and had expressed a desire to live with him. Therefore, father argues, there was no reason for the juvenile court not to place Aaron in his custody and the juvenile court was compelled to do so under section 361.2, subdivision (a). We disagree.

Section 361.2, subdivision (a) expresses the legislative preference for placement with the noncustodial parent when safe for the child. It states:

“When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.”

Thus, the juvenile court must place the child with the noncustodial parent unless it would be detrimental to the child. The juvenile court's finding of detriment under section 361.2, subdivision (a) must be based on clear and convincing evidence. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

When the juvenile court's finding of detriment under section 361.2, subdivision (a) is challenged on appeal, we do not review the record to determine whether there was evidence to support a contrary finding. Rather, we determine whether there is substantial evidence from which the juvenile court could find clear and convincing evidence that placement would be detrimental. (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262.) In this case, we conclude such evidence exists.

Father had two years under the department's supervision to demonstrate through regular and increasing visitation that he was committed to having Aaron placed with him and that it was safe to do so. Instead, he failed to maintain even minimal contact, leaving Aaron disappointed and feeling insignificant. Aaron had not lived with father in a long time and father was as much a stranger to him at the setting hearing as he was when these proceedings were initiated. Thus, the detriment to placing Aaron with father was the possibility that father would not properly care for Aaron—a possibility made that much more acute by Aaron's special needs.

We conclude substantial evidence supports the juvenile court's detriment finding and deny the petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.